



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R09-OAR-2019-0393; FRL-10000-52-Region 9]

Partial Approval, Partial Disapproval and Promulgation of State Plans for Designated Facilities and Pollutants; California; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a Clean Air Act (CAA) section 111(d) plan submitted by the California Air Resources Board (CARB) to implement the EPA's Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Emission Guidelines). This State plan submittal pertains to the regulation of landfill gas and its components from existing municipal solid waste (MSW) landfills. We are partially approving the State plan because it meets many of the requirements of the Emission Guidelines. However, we are partially disapproving the State plan because it does not fully meet certain provisions of the Emission Guidelines.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register]. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0393. All documents in the docket are listed on the <https://www.regulations.gov>

web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4152 or by email at buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On July 30, 2019, the EPA proposed to partially approve and partially disapprove a section 111(d) plan submitted by CARB for existing MSW landfills. 84 FR 36863. The submitted section 111(d) plan was in response to the August 29, 2016 promulgation of revised emission guidelines requirements for MSW landfills, 40 CFR part 60, subpart Cf.¹ Included

¹ 81 FR 59276.

within the section 111(d) plan are regulations under the California Code of Regulations (CCR), at 17 CCR 95460-95476, entitled, “Methane Emissions from Municipal Solid Waste Landfills.”

A detailed explanation of the rationale behind the proposed approval is available in the Technical Support Document in the docket for this rulemaking.

We proposed to partially approve this plan because we determined that it complies with the relevant CAA requirements, with the exception of the omission of the following operational, monitoring, recordkeeping, and corrective action requirements related either to temperature and/or oxygen or nitrogen: 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5). Upon promulgation of the Federal plan in accordance with 40 CFR 60.27(c), the EPA plans to update 40 CFR part 62, subpart F, to identify the omitted requirements (40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5)) that MSW landfills in California will have to implement in addition to the approved portion of the California plan.² Our proposed action at 84 FR 36863 (July 30, 2019) contains more information on the plan and our evaluation, and we incorporate that information by reference here.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period we received one comment, from CARB.

Comment: CARB stated that California law currently satisfies what the EPA identified as

² The EPA is required to promulgate regulations setting forth a federal plan on or before November 6, 2019. *State of California v. EPA*, No. 4:18-cv-03237 (N.D. Cal. 2019) (Court Order issued May 6, 2019). Pending before the court is a motion to vacate the deadline for promulgation of a federal plan, based on EPA’s recent finalization of revisions to emission guidelines implementing regulations. *Id.*, Motion to Amend Order and Judgment (filed August 26, 2019) (citing 84 FR at 44556 (codified at 40 CFR 60.30f(b))).

deficiencies in its July 30, 2019 proposed partial disapproval of the California plan. In support of its argument, CARB submitted rules with its comment regarding the regulation of MSW landfills from 32 of California's 35 local air districts, and documentation regarding public hearings related to their adoption. CARB also submitted a table summarizing the rules and a previously submitted letter addressing questions the EPA had asked about the California plan.³ CARB requests that the EPA withdraw its proposed partial disapproval of the California plan and approve it in its entirety, or, in the alternative, that the EPA incorporate the provisions of the rules and regulations into the State's plan and then fully approve the plan.

Response: Pursuant to 40 CFR 60.24(c), a state plan must contain standards of performance that are no less stringent than the corresponding emission guideline(s) specified in subpart C of part 60. Subpart C sets forth clear mandatory requirements for an approvable state plan. Sections 60.34f, 60.36f, 60.37f, 60.38f, and 60.39f each include the specific phrase: "For approval, a state plan must include," which is then followed by a reference to specific requirements such as "provisions for the operational standards in this section," "the compliance provisions in this section," "the monitoring provisions in this section," "the reporting provisions listed in this section," or "the recordkeeping provisions in this section." As explained in our proposed action, the California plan, as submitted, omits these provisions.

We note that CARB's comment does not dispute that the California state plan lacks the operational, monitoring, recordkeeping, and corrective action requirements previously identified by EPA, namely, those set forth in 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5). Nor does CARB dispute that the California State plan, which

³ Appendix C to CARB's comment letter is entitled, "Air District Rules, Regulations, and Permit Conditions." The EPA found district rules and regulations in Appendix C, but was unable to find permit conditions in the document.

incorporates the California regulation, “Methane Emissions from Municipal Solid Waste Landfills,” does not itself contain these operational, monitoring, recordkeeping, and corrective action requirements.

Instead, CARB argues that other provisions that “are already part of California law,” and that appear in the rules and regulations of 32 of California’s 35 air districts, can stand in lieu of what EPA identified as the operational, monitoring, recordkeeping, and corrective action requirements that are omitted from the California State plan. Although CARB provided these rules and regulations in an appendix to its comments, the rules and regulations are not part of CARB’s submitted plan, and the EPA does not have authority to incorporate all or part of them into the plan on behalf of CARB. The EPA cannot approve a state plan that omits certain required elements on the basis that some other local regulation or permit that is not part of the submitted plan contains provisions that may resemble those elements. In accordance with CAA section 111(d)(1)(B),⁴ EPA’s implementing regulations,⁵ and the Emission Guidelines,⁶ the required elements must be in the plan itself.

Additionally, even if CARB had properly incorporated the rules and regulations into its plan, the EPA notes that the rules and regulations for the most part cross-reference older EPA regulations that apply to MSW landfills for which the applicability threshold is 50 megagrams/year (Mg/yr) of non-methane organic compounds (NMOC) emissions. Those older EPA regulations do not apply to MSW landfills whose emissions of NMOC are below 50 Mg/yr

⁴ 42 U.S.C. 7411(d)(1)(B) (state plans must “provide[] for the implementation and enforcement of [] standards of performance”).

⁵ 40 CFR 60.25(b) (state plans must include monitoring, recordkeeping, and reporting requirements).

⁶ *See, e.g.*, 40 CFR 60.36f (“For approval, a state plan must include the compliance provisions in this section.”).

but above the currently applicable threshold in Subpart Cf, 34 Mg/yr.⁷ This discrepancy means that landfills in California with NMOC emissions greater than 34 Mg/yr but less than 50 Mg/yr would not be required to comply with the requirements of 40 CFR 60.34f, 60.36f, 60.37f, 60.38f, and 60.39f.⁸

Many of the rules cited by CARB are requirements for 40 CFR part 70 operating permit programs pursuant to title V of the CAA. Again, the EPA does not have the authority to incorporate California's local rules, regulations, and permit conditions into its state plan. Moreover, it is unclear whether a state's part 70 program or permit conditions – even if they were properly incorporated into a state plan -- could provide the requisite elements for an approvable state plan.

In addition, CARB's comment included problematic requests to the EPA to take certain procedural steps regarding the submitted local rules. Again, the EPA lacks the authority to incorporate regulations into the California plan; only California can revise its plan by incorporating appropriate measures and then submit the revised plan to the EPA. The EPA can then review the revised plan as submitted to determine whether it is approvable.⁹

III. EPA Action

For the reasons discussed in our proposed action and above, as authorized in 40 CFR

⁷ Attachment A to CARB's letter indicates that many local rules cross-reference 40 CFR part 60, subparts Cc and WWW. The applicability threshold in subparts Cc and WWW is 50 Mg/yr NMOC. *See* 40 CFR 60.33c(e)(2)(i) and 60.752(b)(2), respectively.

⁸ As a condition for state plan approval, subpart Cf requires that a state's regulations control emissions at 34 Mg/yr or higher, regardless of whether a state has landfills at 34 Mg/yr. The EPA estimates, however, that 15 to 20 landfills in California fall within the range of 34 Mg/yr to 50 Mg/yr. *See* Emission Inventory for year 2019: MSW Landfill Federal Plan.

⁹ CARB's letter appears to acknowledge that additional procedural steps, at the state and/or local level, may be necessary for the local rules to be "properly" incorporated into the California plan. *See* CARB Letter at page 2 and Attachment A at page 8.

60.27(b), the EPA is partially approving and partially disapproving the plan submitted by CARB. The EPA's partial approval of the California plan is limited to those landfills that meet the criteria established in subpart Cf.

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing regulatory text that includes the incorporation by reference of 17 CCR 95460-95476, (collectively, subarticle 6 entitled "Methane Emissions from Municipal Solid Waste Landfills,") operative June 17, 2010, which is part of the CAA section 111(d) plan applicable to existing MSW landfills in California as discussed in section I of this preamble. The regulatory provisions in 17 CCR 95460-95476 establish requirements to reduce air emissions of methane and other landfill gases from all MSW landfills located in California that received solid waste after January 1, 1977. The regulations include measures related to emission standards, installation of emission control systems, testing, monitoring, reporting, and recordkeeping provisions. The EPA has made, and will continue to make, the entire California plan generally available through www.regulations.gov, Docket No. EPA-R09-OAR-2019-0393, and at the EPA Region IX Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the plan is federally enforceable under the CAA, and is limited to those sources subject to 40 CFR part 60, subpart Cf, as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42

U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

Dated: September 6, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

**PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F--California

2. Amend § 62.1100 by:

a. In paragraph (b)(3)(i) introductory text, removing “rules;” and adding “rules.” in its place;

b. Redesignating paragraphs (b)(3)(i)(a) through (c) as paragraphs (b)(3)(i)(A) through (C), respectively;

c. In paragraph (b)(3)(vi) introductory text, removing the semicolon and adding a period in its place;

d. Redesignating paragraphs (b)(3)(vi)(a) through (d) as paragraphs (b)(3)(vi)(A) through (D), respectively; and

e. Adding paragraphs (b)(7) and (d).

The additions read as follows:

§ 62.1100 Identification of plan.

* * * * *

(b) * * *

(7) State of California's Section 111(d) Plan for Existing Municipal Solid Waste Landfills, including 17 CCR 95460-95476 (collectively, subarticle 6 entitled “Methane Emissions from

Municipal Solid Waste Landfills,”) operative June 17, 2010, submitted on May 30, 2017 by the California Air Resources Board to implement 40 CFR part 60, subpart Cf. The Plan does not include provisions relating to 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5). The Plan includes the regulatory provisions cited in paragraph (d) of this section, which the EPA incorporates by reference.

* * * * *

(d)(1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the material at the EPA Region 9 office, 75 Hawthorne Street, San Francisco, CA 94105, 415-947-8000 or from the source listed in paragraph (d) of this section. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(2) State of California, Barclays Official California Code of Regulations.

(i) 17 CCR , Division 3. Air Resources, Chapter 1. Air Resources Board, Subchapter 10. Climate Change, Article 4. Regulations to Achieve Greenhouse Gas Emission Reductions, Subarticle 6. Methane Emissions from Municipal Solid Waste Landfills, sections 95460-95476, operative June 17, 2010.

(ii) [Reserved]

3. Section 62.1115 is revised to read as follows:

§ 62.1115 Identification of sources.

(a) The plan in § 62.1100(b)(5) applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, as described in 40 CFR part 60, subpart Cc.

(b) The plan in § 62.1100(b)(7) applies to existing municipal solid waste landfills that commenced construction, modification or reconstruction on or before July 17, 2014.

(1) After **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the substantive requirements of the municipal solid waste landfills State plan are contained in paragraph (b) of this section and owners and operators of municipal solid waste landfills in California must comply with the requirements in paragraph (b) of this section.

(2) [Reserved]

(c)(1) The effective date of the plan in § 62.1100(b)(5) by the California Air Resources Board for municipal solid waste landfills is November 22, 1999.

(2) The effective date of the plan in § 62.1100(b)(7) by the California Air Resources Board for municipal solid waste landfills is **[insert date 30 days after date of publication in the Federal Register]**.

[FR Doc. 2019-28235 Filed: 1/8/2020 8:45 am; Publication Date: 1/9/2020]